

Applicant : Lindberg, Paul A.
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REMARKS

Applicant respectfully requests reconsideration of the above-identified patent application. Claims 16, 19 and 22 remain in the application. Claims 16 and 22 are amended. Claims 1-15, 17, 18 and 20-21 are cancelled. Applicants respectfully traverse the rejections as conceivably applied to the pending claims.

I. Claim Objections

Claims 2, 16 and 22 were objected to based on a formality, and have been amended as required by the Examiner. Accordingly, Applicant submits that this objection has been overcome.

II. §103(a) Obviousness Rejection Based on the Combination of Kifer, Hendrickson, Eckert and Miller

As previously presented, claims 20 and 22 were rejected as being unpatentable over U.S. Patent D245,972 to Kifer in view of U.S. Patent 1,480,820 to Hendrickson, U.S. Patent 1,468,344 to Eckert and further in view of U.S. Patent 3,572,808 to Miller. The features of claim 20 have been added to amended independent claim 16.

Kifer is a design patent for an ornamental design for lifting tongs. Kifer appears to disclose tongs that follow a radius of curvature having a center on an exterior side of the respective tong. However, the tongs are misaligned and are not positioned to extend in a common plane.

Hendrickson discloses an ice tong device having a pair of arms that are connected at a pivot point. The arms appear to lie in a common plane, except at the pivot point, where each of the arms is offset.

Applicant submits that combining Kifer with Hendrickson would destroy the intended

function of Kifer because the arms of Kifer *must* be misaligned to function properly. Specifically, the Kifer configuration allows the jaws to be opened by sliding the upper portion of one arm past the lower portion of another arm. This movement would not be possible in the configuration of Hendrickson, in which the lower portions of one arm cannot slide past the upper portion of another arm because of the offset at the pivot region of the arms. Therefore, the combination of the misaligned arms of Kifer with the aligned configuration of Hendrickson would destroy the intended function of Kifer.

Further, the Examiner acknowledges that neither Kifer nor Hendrickson disclose a jaw with teeth oriented along a radius of curvature on the jaw and therefore cites Eckert, which discloses a tong-like pipe lifter including a pair of elongated lever members, which are pivotally connected near their lower ends. However, Eckert does not address the above-noted shortcomings of Kifer and Hendrickson.

Moreover, the modification of Kifer to include the Eckert jaw would destroy the intended function of the jaw. The Eckert device, which is configured to grip a long pipe from the side, includes jaws that extend from only one side of the levers so that a pipe can be captured in the jaw along side the arms. Thus, the jaws *must* be offset to function properly. In Kifer, the jaws are at the center of the arms and are not offset to either side. If the Eckert jaws replaced the jaws of Kifer, the jaws could not perform their intended function as a pipe lifter because the pipe would be obstructed by the arms. In other words, the jaws of Eckert rely on the offset relationship between the jaws and arms in order to function.

Additionally, there is no teaching, suggestion or motivation in any of the prior art of

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record to combine Kifer or Hendrickson with Eckert. “[I]t is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *In re Wesslau*, 147 U.S.P.Q. 391 (C.C.P.A. 1965). The curved jaws extending from one side of the scissor-like arms of Eckert are specifically designed to grasp a pipe. Without some teaching, suggestion or motivation, a person of ordinary skill in the art would not have singled out the curved jaws of the Eckert pipe lifter for combination with a pair of lifting tongs or ice tongs having centered jaws.

The Examiner acknowledges that Kifer, Hendrickson and Eckert do not disclose a handle and, therefore, cites Miller for the disclosure of a handle on a tong-type device. First, Applicant respectfully submits that Miller does not overcome the above-listed deficiencies of Kifer, Hendrickson and Eckert. Miller discloses a tong-type device adapted to lift beams and girders, with gripping members that are particularly configured for that purpose. The tong arms are connected in a scissor-like manner and do not extend in a common plane.

Additionally, as claimed in both independent claim 16 and 22, the handle of the device is positioned to extend from the tong arms in a direction perpendicular to the common plane formed by the tong arms. The positioning of the handles in this orientation specifically configures the device for manipulating landscaping. In contrast, the respective handles of Miller are attached to the tong arms in a direction parallel to the common plane of each tong arm.

Furthermore, the Examiner has not suggested why Kifer, Hendrickson, Eckert and Miller would be combined for any reason other than a hindsight attempt to reconstruct the present

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invention. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct 1727, 1741 (2007). The tong device of Miller includes gripping members that have inward-facing flanges adapted to lift construction beams and girders. A person of ordinary skill in the art would not have singled out the various individual elements of a pipe lifter, ice tongs and lifting tongs without some teaching, suggestion or motivation.

Claim 19 depends from amended independent claim 16 and is therefore allowable for at least the reasons noted above in connection with claim 16.

For at least the reasons discussed above, the rejection of amended independent claims 16 and 22 should be withdrawn.

III. Conclusion

In conclusion, it is respectfully submitted that the present application is in condition for allowance. A notice to that effect is earnestly and respectfully requested.

Respectfully submitted,

By: Warner Norcross & Judd LLP

/Deidre D. Link/

Deidre D. Link

Registration No. 57,184

900 Fifth Third Center

111 Lyon Street, N.W.

Grand Rapids, MI 49503-2487

(616) 752-2753